IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 690 OF 2003

The State of Maharashtra ..... Appellant

Versus

Sudhir Namdeo Kurungale ..... Respondent

Mr. A.S. Shitole, APP for the Appellant.

CORAM : A.S. OKA, J.

DATE : 5TH DECEMBER 2006

P.C.

1) Heard learned APP in support of the appeal. Appeal is for enhancement of sentence. The Respondent-accused has been convicted for offences punishable under Sections 323 and 426 of the Indian Penal Code. For offence punishable under Sections 323 and 426 of the Indian Penal Code, the Respondent has been sentenced to suffer imprisonment till rising of the Court. For the first offence, he has been directed to pay fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for 3 months. For the second offence, fine of Rs.100/- has been imposed and in default of payment of fine, the Respondent is directed to suffer simple imprisonment for 7 days.

2) The learned Trial Judge has considered the fact that the age of the Respondent at the relevant time was only 30 years. The Respondent having family consisting of his wife, two sons of tender age, old mother and two younger brothers. The offence against the alleged Respondent-accused is of causing hurt to the complainant who is the public servant by giving him two slaps on his face.

3) The Respondent was acquitted of the offences under Sections 353 and 332 of the Indian Penal Code. The Appellant preferred the appeal against the acquittal which has been dismissed by this Court by Order dated 15th September 2004.

4) The case of the prosecution is that the Respondent drove his Tempo in a lane where entry was prohibited. A Police Constable accosted the Respondent. The Respondent appears to have protested as according to him, there was no restriction on the entry in the said lane. As a result there was an altercation between the Respondent and Police Constable. The Police Constable was injured as a result of two slaps given by the Respondent. The Trial Court has recorded a finding that the prosecution has failed to establish that the entry of vehicles in that particular lane was prohibited. On the basis of this finding of the Trial Court, the appeal against

acquittal preferred by the Appellant- State has been dismissed.

5) If this is the factual position which is reflected from the record, discretion exercised by the Trial Court by taking a lenient view while imposing sentence cannot be faulted with. There is no merit in the appeal and the same is dismissed.

(A.S. OKA, J.)